IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/08/2003

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 380 of 1995

1. David
2. Josephraj ... Appellants

-Vs-

The State, rep. by
Sub-Inspector of Police,
Thakkalai Police Station,
Thakkalai, Kanyakumari District.
(Cr.No.36 of 1994) ... Respondent

Prayer: Appeal against the judgment passed by the learned District Sessions Judge, Nagercoil, Kanyakumari District, in S.C.No. 72 of 19 94 dated 8.3.1995.

!For Appellants : Mr.P.N.Prakash
for M/S.P.N.Manoj Pandian and
P.Rathinavel

^For Respondent : Mr.M.K.Subramanian
Govt. Advocate (Crl. Side)

:J U D G M E N T

(Judgment of the Court was delivered by M.CHOCKALINGAM, J)

The appellants herein, who were ranked as A-1 and A-2 and who were charged, tried and found guilty under Sections 341 and 302 I.P.C. and were sentenced life imprisonment for the latter offence and a fine of Rs.250/- with a default sentence of one month S.I. for the former offence, while A-3, who was charged under Sections 341 and 302 I.P.C., is acquitted, have brought forth this appeal.

2. The short facts, which led to the framing of the said charges can be stated thus:-

(a) P.Ws.1 to 3 and one Sreekanth, the deceased in the case,

were residents of Kanchirathukkonam village and they used to go to Velimalai at Yerumaipatti for the purpose of taking plantain leaves. All the three accused were also employed in a rubber shop in that area. On 11.1.94 at about 5.30 a.m., when these three witnesses, P.Ws.1 to 3 and the deceased went in cycles on the road at Yezhanapothai, the deceased took his cycle overtaking A-1. On seeing this, A-1 pushed him down, uttered filthy language and slapped him also. In reply, the deceased also slapped him once. Immediately, A-1 uttered 'I will see you'. All of them left for their respective employment. Again, on 12.1.94 at about 5.30 a.m., when the deceased accompanied by P.Ws.1 to 3 was proceeding for the work, they reached the place called Karumparai at Velimalai. At that time, A-1 to A-3 waylaid them and A-1 took a stone and hit him on the face and caused bleeding injuries. A-2, who was holding a stick, attacked him on the head and A-3 fisted him on his chest and stomach. All the three witnesses, P.Ws.1 to 3, witnessed the occurrence. When they shouted, the accused went away from the place. P.Ws.1 to 3 were able to see the occurrence with the help of a tubelight, which was burning on the post. They took the injured Sreekanth by boarding a bus to Kumarapuram and therefrom, they took a car and took him to the Government Hospital at Neyyur. P.W.4, the doctor, who was on duty at that time, examined him and found him unconscious. He also noted injuries on him and issued Ex.P.2, the wound certificate. Within five minutes of time, that is, at about 8.20 a.m., Sreekanth died and the doctor gave an intimation to Thakkalai police station. P.W.9, the Sub-Inspector of police, who was on duty at the time, on receipt of the information, proceede d to the Government Hospital, Neyyur and recorded the statement of P.W.1, which is marked as Ex.P.1. On the strength of Ex.P.1, he registered a case in Crime No.36 of 1994 of Thakkalai police station. The printed F.I.R., which is Ex.P.9, was despatched to Court. P.W.10, the Inspector of Police attached to Thakkalai police station, on receipt of the copy of the F. I.R., took up the investigation and proceeded to the scene of occurrence and in the presence of two witnesses, he prepared Ex.P.6 mahazar and Ex.P.10, sketch. He, thereafter, proceeded to the hospital at Neyyur and conducted the inquest on the dead body of Sreekanth and prepared the inquest report, Ex.P.11. He gave a requisition through P.W.1 1, a constable, for the purpose of autopsy.

(b) On receipt of the requisition, P.W.5, the doctor attached to Government Hospital, Thakkalai, conducted autopsy on the dead body of Sreekanth and found the following injuries, which he noted in Ex.P.5, the post-mortem certificate:-
1. A lacerated injury 2 = cms. x 1 cm. x 1/2 cm. in the left side of face extending from the base of left nostril to the left side of upper lip oblique in direction.

2. A contusion 8 cms. x 5 cms. in the occipital region in the middle part of the scalp oblique in direction upper part of the contusion directed upwards and laterally to the left side and lower part of the contusion directed laterally and downwards to the right side.

In the post-mortem certificate, the doctor, P.W.5, has given his opinion, opining that the death would appear to have occurred about 24 to 28 hours prior to post-mortem and that the deceased would have died on account of shock

and haemorrhage due to the injuries sustained on the head.

(c) On 13.1.94 at about 5.30 a.m., the accused were arrested by the investigating officer, during which, A-2 made a confessional statement. In the presence of two witnesses, P.W.7 and one Wilson, the confessional statement of A-2 was recorded by the investigating officer. The admissible part is marked as Ex.P.7. Pursuant to the confessional statement, A-2 took the investigating officer and the witnesses and produced M.O.1, the stick, which was used by him at the time of occurrence and the same was recovered under Ex.P.8 mahazar. All the material objects recovered by the investigating officer during investigation were sent to Court and all the accused were sent for judicial custody. As per the requisition put forth before the Court, all the material objects were subjected to chemical analysis. Since P.W.10 was transferred, the subsequent Inspector of Police, one Srinivasan took up the investigation and verified the records. On completion of the investigation, he laid the final report before the Court.

3. In order to prove the charges levelled against A-1 to A-3, the prosecution marched 10 witnesses and relied on 11 exhibits and 3 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They flatly denied them as false. No defence witnesses were examined and no exhibits or material objects were marked on the defence side. On consideration of the rival submissions made and on a scrutiny of the materials available, the trial Court found A-1 and A-2 guilty as per the charges levelled against them under Sections 341 and 302 I.P.C. and awarded the punishment as referred to above, but acquitted A-3 of the charges levelled against him.

4. Advancing his arguments on behalf of the appellants/accused 1 and 2, the learned counsel, Mr.P.N.Prakash, would submit that the lower Court, without proper appreciation of the evidence, found A-1 and A-2 guilty, but on the same evidence, it has acquitted A-3 from the charges; that the prosecution did not come out with a clear motive and that it had made a false accusation against the accused; that the prosecution witnesses and the deceased were actually bringing illicitly distilled arrack to the village, which the villagers and the accused prevented and aggrieved over the same, the prosecution witnesses have foisted a false case upon these accused; that the occurrence, according to the evidence, had taken place at about 5.30 a.m., but they have brought the injured at 8.15 a.m. to the hospital, which is within a short distance from the place of occurrence and that the earliest statement to the doctor, P.W.4, was that the injuries were caused at about 7.20 a.m. by some persons and thus, there is a doubt in regard to the time of occurrence and the witnesses have not even given number of persons or their names particularly and apart from that, the postmortem certificate issued by the doctor, P.W.5, would reveal that 20 ml. of fluid material was found in the stomach at the time of postmortem, but according to the prosecution witnesses, they have had nourished food at about 5.30 a.m. before they started for their work and thus, it would all falsify as to the time of occurrence and that there is lot of discrepancies in the evidence of

P.Ws.1 to 3, which would indicate that they could not have seen the occurrence at all; that insofar as the earlier day occurrence was concerned, it was a false introduction for the purpose of strengthening the prosecution case. Added further, the learned counsel, that even assuming that the allegations made against the appellants/accused are proved, it would not fall under the definition of murder and insofar as A-1 is concerned, at the time he was unarmed and according to the prosecution, he took a stone and caused an injury on the lips and that the injury that is noted in the wound certificate, Ex.P.2, according to the doctor, P.W.4, is very very simple in nature and insofar as A-2 is concerned, he used only a stick and caused an injury and hence, it would attract only a lesser offence and hence, the defence contentions have got to be considered by this Court.

5. Stoutly opposing the above contentions, the learned Government Advocate would contend that the lower Court, only on the available evidence, has come to the conclusion that the prosecution has proved the case beyond reasonable doubt, that P.Ws.1 to 3 have clearly spoken about the occurrence and the ocular testimony is fully corroborated by the medical evidence and thus, the lower Court was perfectly correct in finding the appellants/accused guilty under Section 302 I.P.C. and awarding life sentence and accordingly, the judgment of the lower Court has to got to be affirmed.

6. It is not in dispute that Sreekanth, who was taken to the hospital, was found unconscious and immediately, he met his death by homicidal violence. This fact is also proved by the prosecution by adducing the evidence of P.W.5, the post-mortem doctor and the certificate, Ex.P.5, issued by the said doctor in that regard. The doctor has clearly stated in his evidence that the second injury found on the middle part of the scalp measuring 8 cms. x 5 cms. has caused the death.

7. P.Ws.1 to 3 have given a categorical statement about the incident that took place on 11.1.94, when A-1 gave a slap to the deceased and in return, he also gave the same and that A-1 also uttered that he will see him and further, it was continued on 12.1.94, the next day, that when these P.Ws.1 to 3 accompanied by the deceased went for their work in the morning, they were waylaid by A-1 to A-3 and then,

the occurrence had taken place. P.Ws.1 to 3 have clearly spoken in one voice that it was A-1, who took a stone at the time and hit the deceased on the face, which has caused injury No.1, as could be seen from the post-mortem certificate, Ex.P.5. They have also clearly spoken that it was A-2, who was holding a stick in his hand and he attacked him on the head, which, according to the post-mortem doctor, P.W.5, was fatal and caused the death. Hence, in such circumstances, this Court is unable to agree or accept any one of the contentions put forth by the appellants' side. The appellants' side is unable to show us any reason or circumstance to disbelieve the evidence of P.Ws.1 to 3. Though P.W.2 was related to the deceased, it cannot be said that his evidence has got to be viewed with suspicion and to be disbelieved, as there is no circumstance or any reason available in the evidence and as far as P.Ws.1 and 3 are concerned, they are not shown in any way interested in the deceased nor they are inimical towards the accused. In such circumstances,

their evidence has got to be believed and the ocular testimony adduced by the prosecution through P.Ws.1 to 3, which is fully corroborated by the evidence through the postmortem doctor, P.W.5, would be suffice to hold that the appellants/ accused are responsible for the act committed at the time and thus, Sreekanth died out of the homicidal violence.

8. Now, coming to the question of the offence committed by the appellants/accused 1 and 2, from the evidence, it could be clear that A-1 was unarmed at the time and he suddenly took a stone and hit the deceased on the face and caused an injury on the lips, as noted in the wound certificate, Ex.P.2, and in the post-mortem certificate, Ex.P.5 . It is needless to say that it was a simple injury caused by A-1, who was unarmed at the time and who has suddenly took a stone and caused the said injury. Hence, in no stretch of imagination, it could be taken as intentional or while causing such an injury, he has got the knowledge that such bodily injury is likely to cause death and therefore, in such circumstances, it would fall under Section 323 I.P.C. Insofar as A-2 is concerned, he was holding a stick and that he attacked the deceased with the stick on the head and caused the second injury, which is fatal according to the post-mortem doctor and that was homicidal violence, which led to the death. Hence, taking into consideration all the facts and circumstances of the case, this Court is unable to agree with the contention of the learned counsel that the offence committed by A-2 would attract a lesser offence and thus, the lower Court was perfectly correct in finding A-2 guilty under Section 302 I.P.C.

9. Therefore, coming to the question of sentence, insofar as A-2 is concerned, the life sentence recorded by the lower Court is confirmed and insofar as A-1 is concerned, the conviction recorded by the lower Court under Section 302 I.P.C. is set aside and instead, he is convicted under Section 323 I.P.C., for which he is sentenced to three months rigorous imprisonment. It is brought to the notice of the Court that A-1 has already served imprisonment for nearly five years and if so, he may be let off.

10. In the result, the appeal is partly allowed. It is reported that the appellant/A-2 is on bail. If so, the learned Sessions Judge shall take steps to commit him to jail to undergo the remaining period of sentence.

Index:Yes
Internet:Yes

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To

1.The District and Sessions Judge, Nagercoil.

2.The Judicial Magistrate, Padmanabapuram.

3.-do- Thro' The Chief Judicial Magistrate, Nagercoil, Kanyakumari District.

4.The District Collector, Kanyakumari District.

5.The Director General of Police, Chennai.

6.The Superintendent, Central Prison, Palayamkottai.

7.The Inspector of Police, Thakkalai Police Station, Thakkalai, Kanyakumari District.

8.The Public Prosecutor, High Court, Madras.